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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,088	11/18/2003	Veronica Wilson-Lowery	23-0622	4862

40158 7590 10/22/2004

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3500 SOUTH FIRST AVENUE CIRCLE
SUITE 250
SIOUX FALLS, SD 57105

EXAMINER

SCHULTERBRANDT, KOFI A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/716,088	Applicant(s) WILSON-LOWERY, VERONICA	
	Examiner Kofi A. Schullerbrandt	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>112403</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This first Office Action is in response to Applicant's originally filed Application received in the Office on November 18, 2003 in this case.

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I, Figures 1 and 3;

Species II, Figure 2;

Species III, Figure 4;

Species IV, Figure 5-7; and

Species V, Figures 8 and 9.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Jeffrey A. Proehl on September 24, 2004 a provisional election was made without traverse to prosecute the invention of Species V, claims 11-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 are hereby withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on November 18, 2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

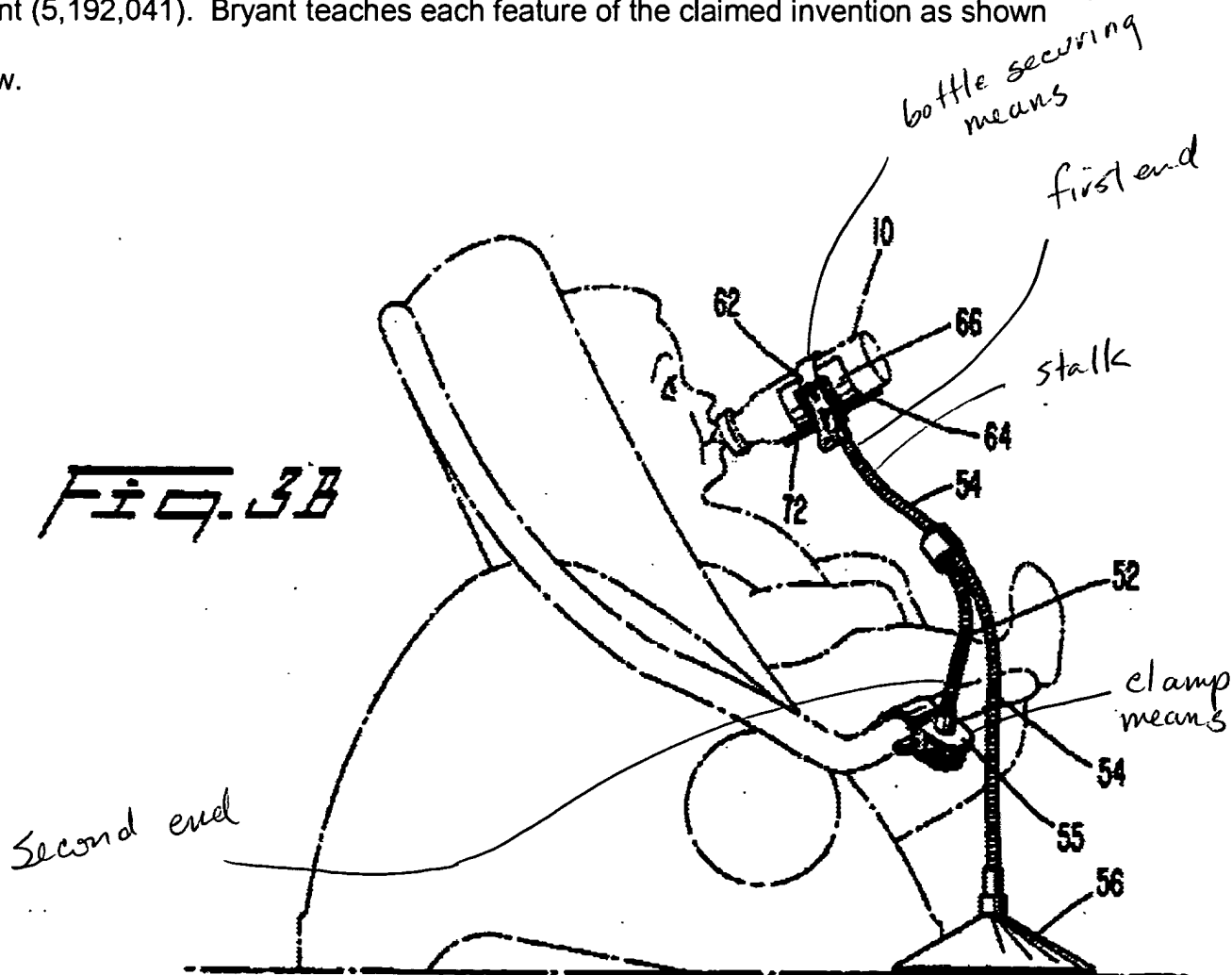
Claim Rejections - 35 USC § 102

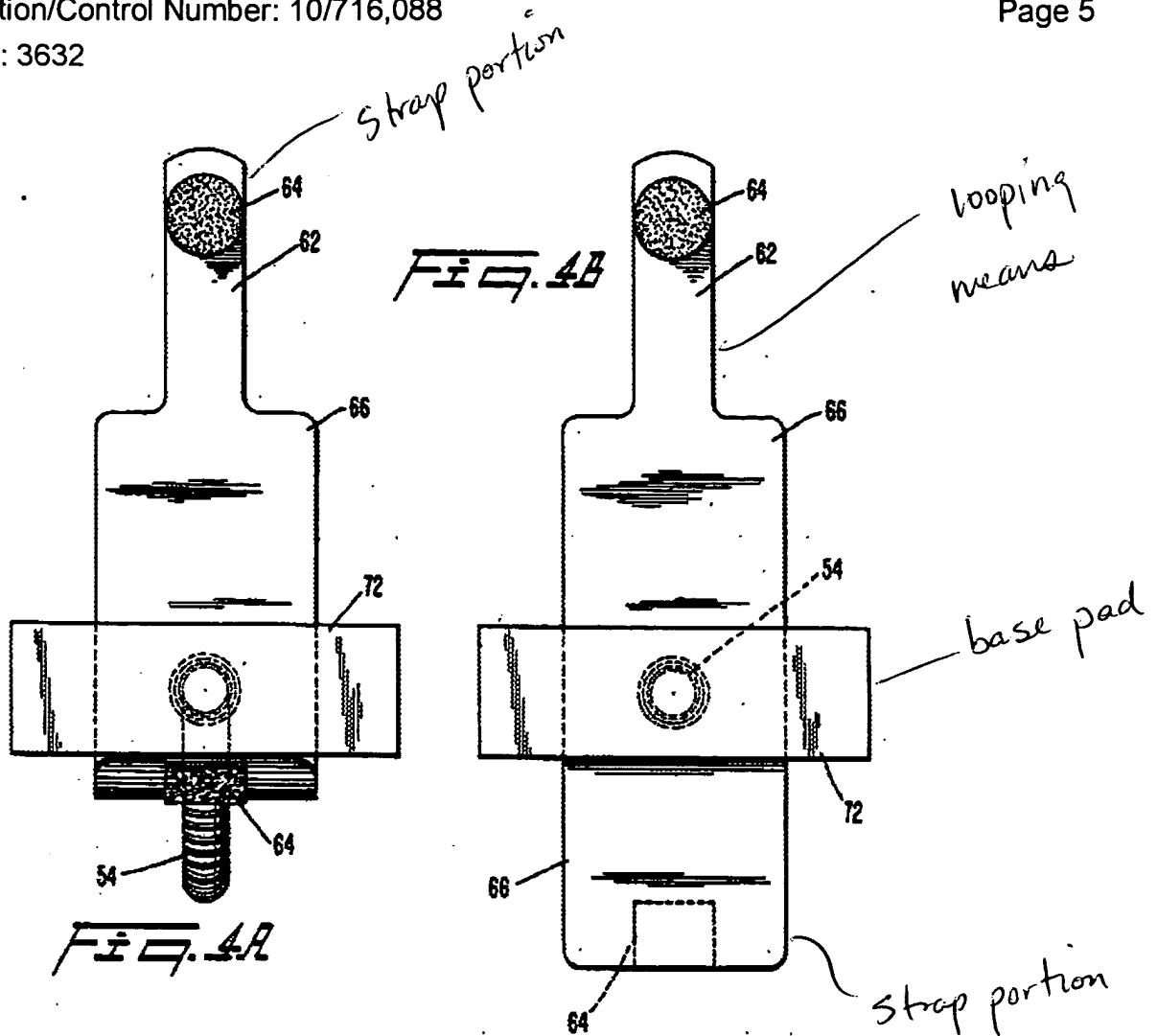
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryant (5,192,041). Bryant teaches each feature of the claimed invention as shown below.





Claims 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ghazizadeh (5,135,189). Ghazizadeh teaches each feature of the claimed invention as shown below.

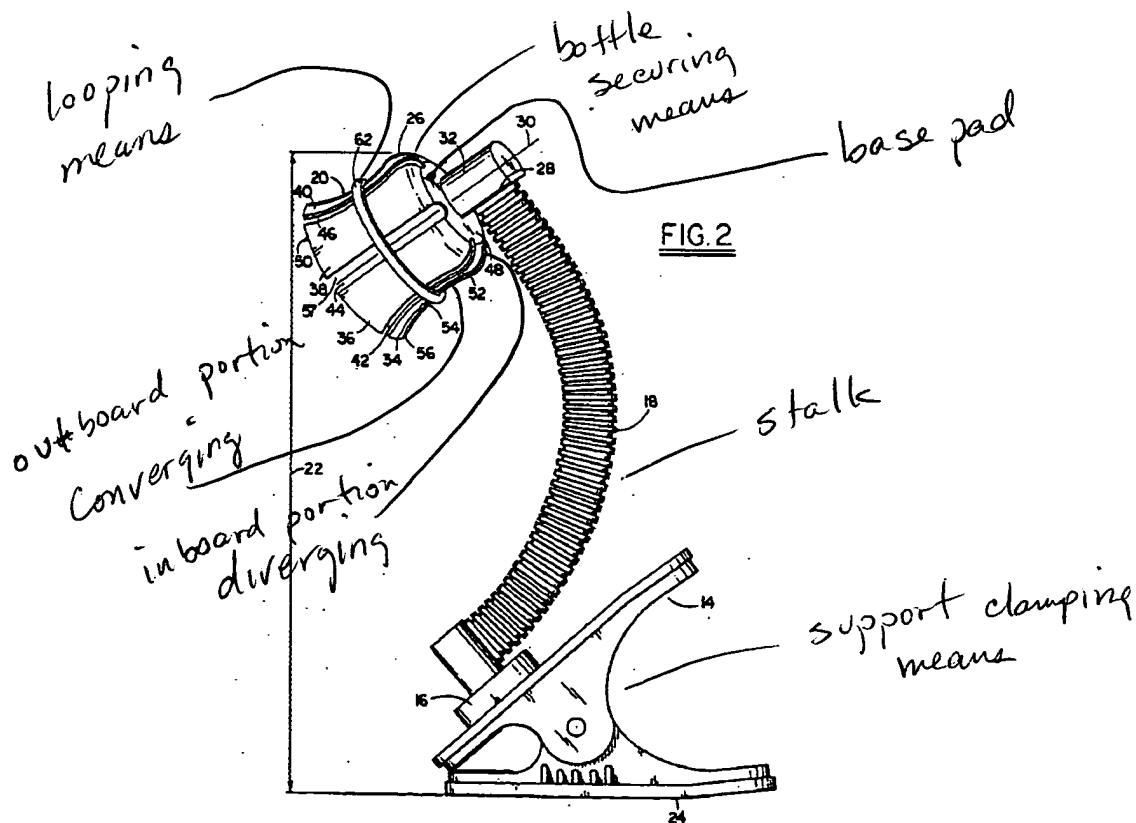
Claim Rejections - 35 USC § 103

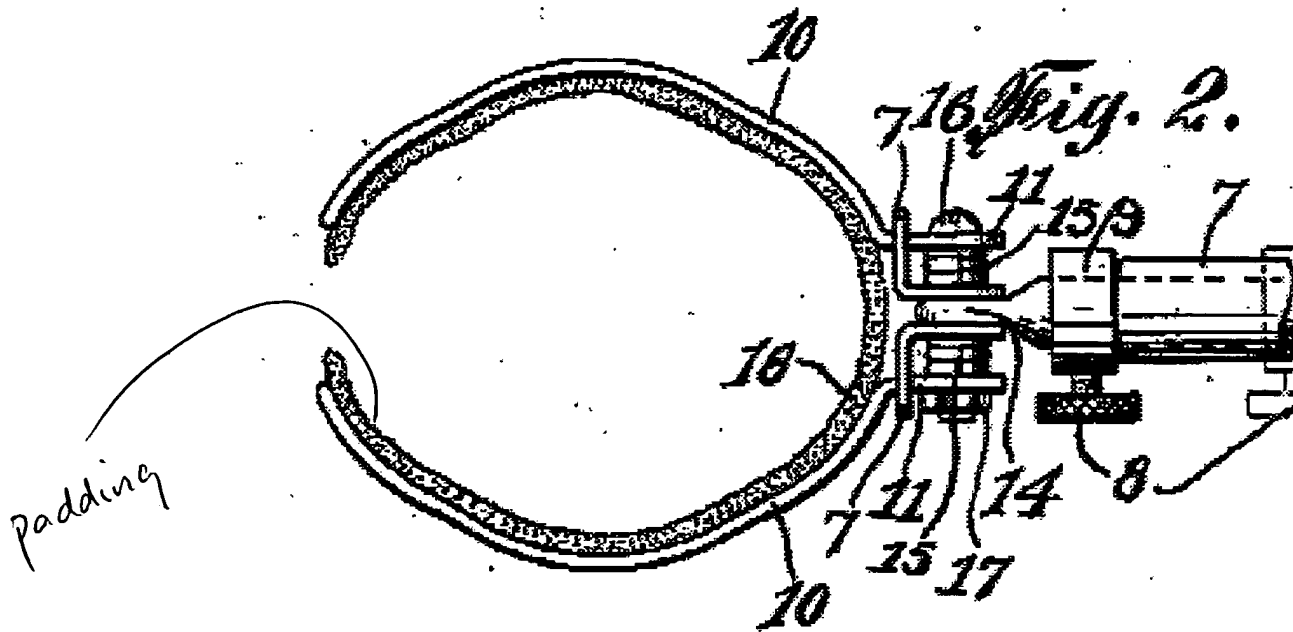
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3632

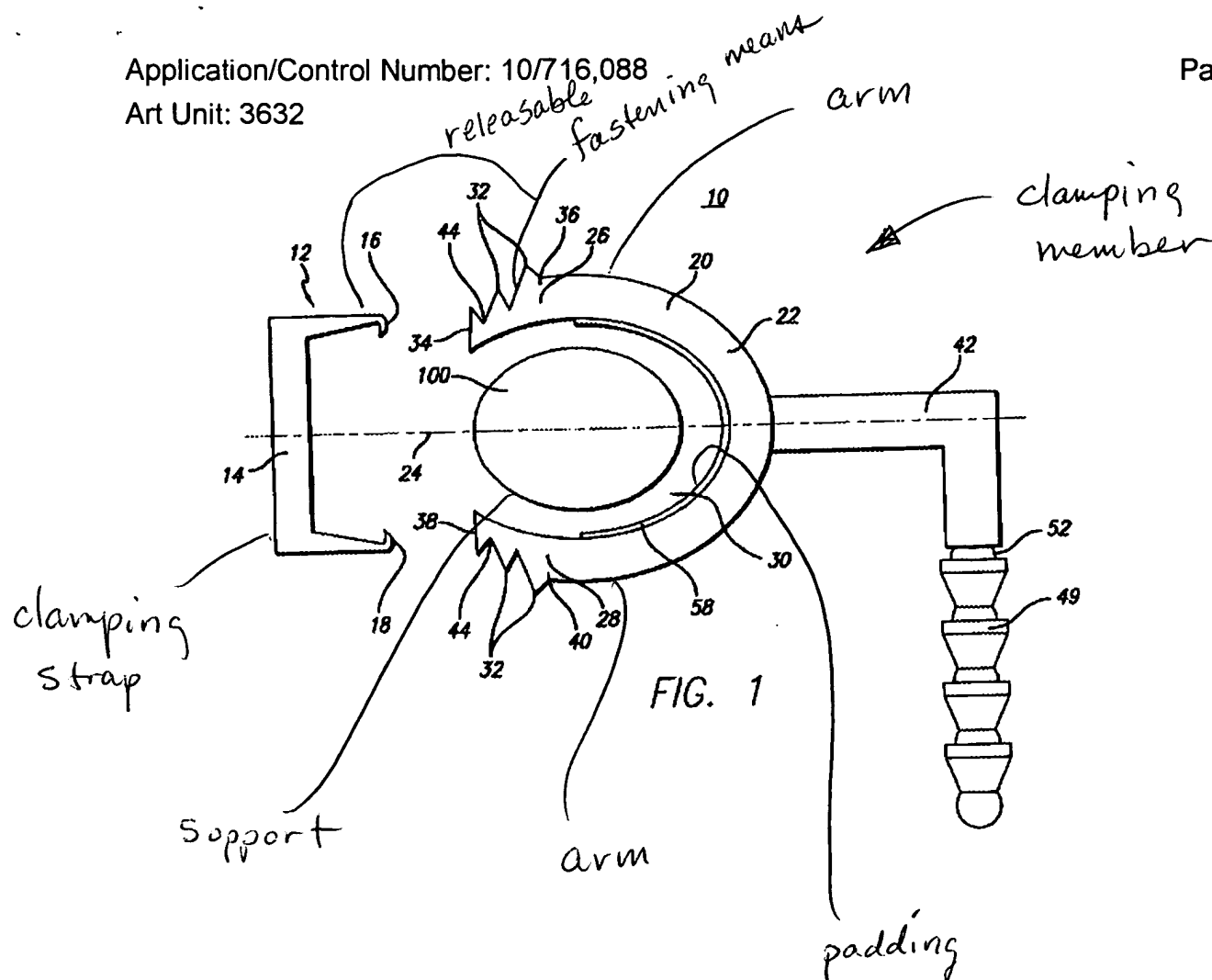
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ghazizadeh (5,135,189), in view of Veras (1,688,765). Ghazizadeh teaches, substantially, each feature of the claimed invention as discussed above including a cup. Ghazizadeh does not teach a resiliently compressible pad positioned in the cup. Veras, however, teaches a compressible pad (18) on the inner portion of its bottle holder. It would have been obvious to one of ordinary skill in the art at the time of invention to have modified Ghazizadeh's cup to include a compressible pad in order to protect the bottle to be held.





Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant (5,192,041), in view of Suh (6,581,886). Bryant teaches, substantially, each feature of the claimed invention as discussed above including a support clamping means having a pair of arms extending away. Bryant does not teach a clamping strap assembly for releasably clamping the arms of the clamping member. Suh, however, teaches a bottle holder having the claimed clamping member and clamping strap as shown below. It would have been obvious to one of ordinary skill in the art at the time of invention have substituted Suh's bottle holder for Bryant's bottle holder to more securely retain the bottle and as a number of types of inventions may hold a bottle equivalently.



Allowable Subject Matter

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Prior Pertinent Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. '423 to Sabalones teaches a bottle holder having a padded interior and a strap securing apparatus.

Reasons for Indicating Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 20, the prior art of record does not teach, in combination with the other features of claim 11, a cup and a resiliently compressible pad positioned in the cup, looping means comprising a pair of strap portions, the pair of strap portions extending in diametrically opposite directions from the base pad, the pair of strap portions each having a free end and fastening means positioned on each of the free ends, a clamp member mounted on the second end of the stalk portion the clamp member having a pair of arms extending away from the stalk portion and a clamp strap assembly having a clamp strap and releasable fastening means releasably fastening the clamping strap to the arms of the clamp member, the releasable fastening means being mounted on outer surfaces of each of the arms of the clamp member.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kofi A. Schulterbrandt whose telephone number is (703) 306-0096. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kofi Schulterbrandt
September 24, 2004


LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER